TESTIMONY OF JUDITH ALLEN
1998-1999 CABLE ROYALTY DISTRIBUTION PROCEEDING

I. PROFESSIONAL QUALIFICATIONS

My name is Judith Allen. I have had more than ten years of experience in the cable television industry, working for both programmers and cable system operators throughout the 1990s.

From 1989 to 1992, I was employed by USA Network as a senior member of its Affiliate Relations department. USA Network is a cable network that offers primarily movies and syndicated programming to cable systems and DBS operators. In 1992, I joined Century Communications, an operator of multiple cable systems (or MSO) with a total of over one million subscribers. From 1992 to 1995, I was the Vice President of Marketing and Public Affairs for Century. My responsibilities included programming, marketing and public affairs. From 1995 to 1998, I served as Senior Vice President of Marketing and Programming.

In 1998, I accepted a position as Senior Vice President of Marketing with MediaOne, then the third largest MSO with approximately five million subscribers. Soon after I joined MediaOne, I added programming to my area of responsibilities and my title changed to Senior Vice President of Video. I worked at MediaOne until mid-2000;

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shortly after its acquisition by AT&T Broadband (which has just been acquired by Comcast). I currently provide consulting services to the cable industry. Among my clients are Fox Cable Networks, Women in Cable & Telecommunications and the Cable Television Association for Marketing.

While employed by Century and MediaOne, I worked with local and regional management to optimize their channel lineups to attract and retain as many subscribers as possible. I also had contact with other MSO executives who had programming and marketing responsibilities. In addition, I negotiated affiliation deals with cable networks for carriage. I also was involved in matters that arose as a result of the 1992 Cable Act, including negotiations for retransmission consent and the re-tiering of service offerings to comply with must-carry requirements and rate regulation. My responsibilities at Century and MediaOne required me to be familiar with the different types of programming available to MSOs, the value of that programming to cable operators and cable subscribers, and the various considerations involved in offering programming over cable television systems and deciding how much to pay for that programming.

II. PURPOSE OF TESTIMONY

I am submitting this testimony to the Copyright Arbitration Royalty Panel on behalf of the Joint Sports Claimants (JSC). I understand that the proceeding before the Panel involves the compulsory license royalties

paid by MediaOne and other cable system operators to carry distant signals during 1998 and 1999. I also understand that the Panel will divide the royalties among the owners of the programming shown on the distant signals by attempting to approximate what each type of programming would have received in the marketplace if there was no compulsory license.

The purpose of my testimony is to provide the Panel with the views of a cable industry executive who was closely involved in making decisions related to the carriage and valuation of distant signal and other programming throughout the 1990s. I approach the issues before the Panel from the perspective of one who purchased programming services and then marketed those services to cable subscribers. Because I was involved in responding to many of the statutory and regulatory mandates handed down by Congress and the Federal Communications Commission in the 1990s, I also can provide the Panel with insight into the effect of the Cable Act on cable operators and their program offerings.

III. VALUE OF DISTANT SIGNAL PROGRAMMING

I understand that the Bortz Media & Sports Group conducts a survey of cable operators each year to determine the value cable operators place on the different types of distant signal programming. I have reviewed the results of the 1990, 1991, 1992, 1998 and 1999 surveys, which show that cable operators considered sports programming to be the most valuable type of programming on distant

signals during each of these years – followed by movies, syndicated series, news and public affairs programming, non-commercial programming and religious programming.

The results of these surveys are consistent with my experience in the cable television industry. I believe that in 1998 and 1999, as in other years, the live professional and collegiate team sports programming on distant signals was the single most valuable type of distant signal programming. I also agree with the conclusion of the Bortz surveys that had there been no compulsory license, the cable industry would have spent approximately 40% of its 1998-99 distant signal license fees for the live professional and collegiate sports programming on the distant signals that were carried during those years.

I further understand that a previous CARP has criticized the Bortz survey because it required cable system operators to provide relative valuations of distant signal programming in a short telephone conversation, whereas the CARP makes the same assessment after conducting a six-month proceeding. I respectfully disagree with that criticism.

From the cable operators' perspective, sports programming is the most valuable type of distant signal programming because it attracts and retains subscribers to a greater degree than any other type of distant signal programming. Cable systems cannot insert their own advertising into distant signals; thus, the value of a distant signal to a cable system

can be measured only by its ability to attract and retain subscribers. To motivate subscriptions, a distant signal must provide unique programming, not available from other sources, that generates a loyal following. The sports programming on a distant signal – again, to a greater degree than any other type of distant signal programming – provides potential and actual subscribers with precisely that type of unique programming, not available from other sources, that generates a loyal following.

That is particularly true of the sports programming on the superstation WGN during 1998 and 1999 (telecasts of the major league baseball telecasts of the Chicago Cubs and White Sox and telecasts of the NBA Bulls featuring Michael Jordan). WGN has been a very popular distant signal for many years. Prior to 1998, the only other distant signal to reach more households was superstation WTBS. In 1998, when WTBS converted to a cable network, WGN became the most popular and widely circulated distant signal. The sports programming on WGN is the most significant reason that cable operators have imported WGN.

Cable operators perceive sports programming not only as the most valuable type of programming but also as the most costly type of programming. During the 1990s in particular major sports leagues were successful in negotiating very sizeable payments from their rights holders. The costs of these deals were then passed through to cable operators. It became an accepted (but unwanted) fact in the industry

that sports programming is the most costly type of programming. Indeed, throughout the 1990s the cable industry generally pointed to the high cost of sports programming as a major factor driving increases in subscriber fees.

IV. IMPACT OF THE CABLE ACT

Perhaps the most significant development in the cable industry during the 1990s was the 1992 Cable Act. In addition to re-regulating the price that cable systems could charge to subscribers, the 1992 Cable Act imposed "must-carry" and "retransmission consent" provisions on cable systems. The must-carry/retransmission consent provisions allowed commercial broadcast stations to choose either to force cable systems in their local areas to carry their signals, or, in the alternative, to force cable systems to obtain the broadcasters' consent before carrying their signals. Commercial broadcast stations (other than superstations) also had retransmission consent rights in distant markets. Non-commercial stations could only invoke must-carry rights in their local markets. The must-carry/retransmission consent provisions gave broadcast stations negotiating and economic power over cable systems that they had never enjoyed before.

The 1992 Cable Act had a significant impact on the programming, including distant signal programming, that cable operators carried. First, the must-carry rules forced many systems to carry over-the-air broadcast stations they had little interest in carrying, such as duplicate

educational stations, religious stations and home shopping stations. Before the must-carry rules were put into place, many systems did not retransmit these stations (even though they were local) to their customers, simply because the cable operators believed that they added little or no value to the system's channel lineup. Thus, for a system at full capacity, the addition of such stations through the must-carry rules meant that the cable system had to drop another channel that a cable system would have valued more highly. From my perspective, the pressure on channel capacity meant that all channels in a system's lineup were subject to re-evaluation.

In determining which channel to drop, the first question for a cable system is which stations *can* be dropped. In their affiliation contracts, many cable networks insist on "no delete" clauses that force cable systems to carry their signal throughout the course of the contract. Such cable networks were effectively eliminated from the list of channels a Century system could drop. Because a cable system does not carry a distant signal under standard cable network contractual obligations, any distant signal was extremely vulnerable to being dropped, particularly if it did not offer sports programming.

Second, the results of the negotiations mandated by the retransmission-consent rules added to the strain on channel capacity for cable systems. Cable systems generally refused to make cash payments to broadcast stations for retransmission consent rights. After sometimes

onerous negotiations, stations desired carriage more than compensation, and generally agreed to be carried without cash payment, although some received promotional consideration. Those stations that were carried on a distant basis had even less bargaining power with cable systems and often received little or no consideration for their retransmission rights.

In return for retransmission consent for stations owned by networks or large station groups, however, cable systems often agreed to carry new cable networks in which broadcasters had an ownership interest. The carriage of these new cable networks further strained the capacity of many cable systems.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Judith G. Allen

Nov. 27, 2002
Date

Certificate of Service

I hereby certify that on Monday, February 12, 2018 I provided a true and correct copy of the Judith Allen Written Direct Testimony (JSC Written Direct Statement Vol. II) to the following:

Devotional Claimants, represented by Michael A Warley served via Electronic Service at michael.warley@pillsburylaw.com

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

Spanish Language Producers, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Multigroup Claimants, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

National Association of Broadcasters (NAB), represented by John Stewart served via Electronic Service at jstewart@crowell.com

Broadcast Music, Inc. (BMI), represented by Jennifer T. Criss served via Electronic Service at jennifer.criss@dbr.com

Canadian Claimants Group, represented by Victor J Cosentino served via Electronic Service at victor.cosentino@larsongaston.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

Public Broadcasting Service (PBS), represented by Dustin Cho served via Electronic Service at dcho@cov.com

SESAC, Inc., represented by John C. Beiter served via Electronic Service at jbeiter@lsglegal.com

MPAA-represented Program Suppliers, represented by Lucy H Plovnick served via Electronic Service at lhp@msk.com

Signed: /s/ Michael E Kientzle